United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

United States Court of Appeals
Second Circuit

75-7241

James C. Gabriel, Pro Se, 75-7241

Objectant-Appellant,

Napoleon C. Gabriel, Michael Moumousis,
and Jacob R. Cohen, June Cohen,

Objectants-Appellants,

-aganist-

Betty Levin, Alleghany Corporation
and Robert LeVasseur,

Plaintiffs-Appellees,

and

Mississippi River Corporation,
Missouri Pacific Railroad Company,
Robert H. Craft, T.C. Davis and
Thomas Milbank, as Defendants-Appellees

On Appeal From the United States District Court
For the Southern District Of New York

Brief For James C. Gabriel, Pro Se, Appellant

James C. Gabriel, Pro-Se, Appellant
P.O. Box 94
Sea Girt, New Jersey 08750
Telephone 201-899-6200

United States Court Of Appeals
Second Circuit

James C.Gabriel,Pro Se,

75-7241

Objectant-Appellant,

Napoleon C.Gabriel,Michael Moumousis,
and Jacob R.Cohen,June Cohen,

Objectants-Appellants,

-against-

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JAMES C.GABRIEL,PRO SE,

Objectant-Appellant,

Napoleon C.Gabriel,Michael Moumousis, and Jacob R.Cohen,June Cohen,

Objectants-Appellants,

-against-

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Plaintiffs-Appellees,

and

Mississippi River Corporation, Missouri Pacific Railroad Company, Robert H.Craft,T.C.Davis and Thomas Milbank,

Defendants-Appellees.

75-7241 Brief for James C.Gabriel,Pro Se, Appellant

STATEMENT

Appellant James C.Gabriel,Pro Se,on behalf of himself, is appealing from a judgment of the United States Federal District Court,Southern District of New York,Docketed and Entered on March 21st,1975 which was a denial by the Court below of Appellant James C.Gabriel's Motion,dated March 4,1975,to be relieved of the District Court's judgment and Order of May 2,1973, approving the Settlement Agreement of a Plan of Recapitalization for the class suit below,and appeals each and every prior order and decision of said Court which supports said judgment. Appellant prays that this Honorable Court rule to have hisMoPac Class B equity bearing common stock evaluated according to the MoPac I.C.C. "Agreed System Plan" of Reorganization or Charter of 1954-1955, which is a law of the United States,because it was approved and certified both by the I.C.C. and the District Court in Saint Louis.

75-7241 Brief for James C.Gabriel,Pro Se,Appellant

Facts

Appellant,James C.Gabriel,Pro Se,at all times mentioned,was a stockholder of Class B equity bearing Common Stock of the Missouri Pacific Railroad Company,having registered in his name One Hundred Twenty Shares of Class B Stock.

That the interests of the Plaintiff-Appellee Alleghany Corporation are in direct opposition to that of Petitioner - James C.Gabriel.The interests of the United States Government are also in direct opposition to the interests of Alleghany Corporation. This"Plan of Recapitalization" of the Missouri Pacific Railroad Company under Section 20a of the Interstate Commerce Act requires Authority to be granted under Section 20a to the Missouri Pacific Railroad Company by the I.C.C. to issue new securities.But in this instance of the "Plan of Recapitalization" of MoPac,new securities were issued for the old securities of Class A $5 Preferential stock (to be paid dividend if earned and declared,that had a liquidating value at all times of $100 per share)and to the Class B equity bearing Common stock(that was entitled to all earnings after the $5 per share of Class A was paid to Class A,the Class B equity bearing stock being entitled to all residuary values after the $100 liquidating value was set aside for the Class A,all according to the MoPac ICC "Agreed System Plan"of Reorganization of 1954-1955) that had no bearing to the "Agreed System Plan" or the MoPac Charter or Plan of Reorganization of 1954-1955 that had been brought about by the ICC,and the Federal District Court in Saint Louis in 1954-1955. The $5 Class A, or Class B equity bearing stock,were not each evaluated under due process of law to find their true value under the "Agreed System Plan" of Reorganizatio

of MoPac by the I.C.C. Division 3.Division 3 merely took the value of #2,450 per Class B as a "fair value" In doing so,Division 3 was evading its duty to evaluate Class B Common according to Class B MoPac Charter,and thus find Class B real value. Class B Common was being under valued. In this process of undervaluation,the United States Government is the loser of over $100,000,000 in capital gains taxes. In other words,whether you like it or not,the United States Federal Courts,including the United States Supreme Court,and the I.C.C.,by not making their decision that Class B equity bearing Common Stock should be evaluated under due process of law according to the MoPac I.C.C. "Agreed System Plan"of Reorganization or Charter of 1954-1955, in order to find Class B equity bearing Common Stock's real true value,which is closer to $22,500 per Class B rather than the low figure of "fair value" of $2,450 per share, are all helping to defraud the U.S.Government Internal Revenue Service of over $100 million in taxes.Minority Class B Stockholders have repeatedly asked the Federal Courts,including the United States Supreme Court,and the I.C.C. to evaluate Class B according to MoPac's Charter,which would give B equity bearing Common Stock of 39,731 shares a value of $894 million dollars,which is made up of $349 million in Retained Income and $545 million in"consolidated nondepreciable properties,including land and land"mineral"rights"as of December 31,1972."Properties are stated at estimated original cost,primarily determined as of January 1,1955 by Interstate Commerce Commission valuations,plus additions and betterments at cost and less retirements since the dates of valuations." (See MoPac '72 Annual Report,page 17 and 21 Exhibits)These properties perhaps worth billions of dollars because they contain millions of acres of mineral rights-of coal,gas,oil,etc.See P.21 Exhibit, '72 Annual Report.See Exhibit P.32 Miss.River Fuel Corp.1962 Prospectus.

Sheet (In Thousands of Dollars)

Liabilities	Dec. 31, 1972	Dec. 31, 1971
Current Liabilities: (Exclusive of Long Term Debt Due Within One Year)		
Accounts and Wages Payable	$ 74,006	$ 74,627
Interest and Dividends Payable	8,148	6,718
Unmatured Interest Accrued	13,625	13,384
Federal Income Taxes Accrued (Note 3)	7,374	7,961
Other Taxes Accrued	9,721	9,503
Other Current Liabilities	17,902	6,292
	130,776	118,485
Long Term Debt — Due Within One Year (Equipment Obligations)	28,599	26,199
Long Term Debt (Page 19)	713,630	690,104
Other Liabilities and Deferred Credits (Note 6)	25,712	23,584
Equity of Minority Stockholders in Consolidated Subsidiaries	39,863	42,203
Stockholders' Equity: (Notes 7 and 9)		
Capital Stock — No Par Value		
Class A — Authorized 3,000,000 shares; outstanding 1,864,352 and 1,864,052 shares, respectively (excluding 17,600 shares held by Company)	186,435	186,405
Class B — Authorized 1,000,000 shares; outstanding 39,731 shares	3,973	3,973
Capital Surplus	1,505	1,517
Retained Income (Page 19)	349,192	331,605
	541,105	523,500
Commitments and Contingent Liabilities (Note 8)		
	$1,479,685	$1,424,075

See Notes to Consolidated Financial Statements, Pages 20-23.

Statement of Consolidated Retained Income
(In Thousands of Dollars)

	Year Ended December 31 1972	1971
Balance at beginning of year:		
As previously reported	$325,965	$318,145
Restatement due to change to equity method of accounting for certain affiliated companies (Note 2)	5,640	4,892
As restated	331,605	323,037
Add — Net Income (In Conformity with I.C.C. Accounting Principles)	27,106	18,086
	358,711	341,123
Deduct — Cash Dividends —		
Class A Stock — $5.00 per share	9,320	9,319
Class B Stock — $5.00 per share	199	199
Balance at end of year (Including $91,813,000 and $84,582,000, respectively, appropriated by the Board of Directors) (Notes 7 and 9)	$349,192	$331,605

See Notes to Consolidated Financial Statements, Pages 20-23.

Long Term Debt
(Including Maturities in 1973)
(In Thousands of Dollars)

	Interest Rate	Date of Maturity	Changes 1972 Issued	Changes 1972 Reacquired	Outstanding December 31, 1972 (excluding amounts held by Company)
Missouri Pacific Railroad Company					
First Mortgage Bonds (1)	4¼%	1990 & 2005		$ 1,161	$247,473
General Mortgage Bonds (1)	4¾% (2)	2020 & 2030		1,278	109,257
Income Debentures	5% (2)	2045			100,016
Equipment Obligations	3⅝% to 9%	1973 to 1987	$33,000	13,816	120,418
Texas and Pacific Railway Company					
First Mortgage Bonds	5%	2000			18,961
Second Mortgage Bonds	5%	2000		65	8
General & Refunding Mortgage Bonds (1)	3⅞%	1985		319	14,634
First Mortgage Bonds (KO&G) (1)	3⅝%	1980		89	2,268
Equipment Obligations	4⅛% to 7¾%	1973 to 1987	7,800	6,767	67,336
Chicago & Eastern Illinois Railroad Company					
Income Debentures (1)	5% (2)	2054			1,721
Equipment Obligations	5% to 6¾%	1973 to 1982	6,225	1,854	14,495
Other Majority-Owned Subsidiaries	3⅜% to 6%	1973 to 1985	10,040	5,790	45,642
Grand Total			$57,065	$31,139	$742,229

Equipment Obligations maturing during each of the next five years	1973	1974	1975	1976	1977
	$28,599	$27,647	$26,726	$25,846	$24,122

(1) Have annual sinking fund requirements.
(2) Contingent interest.

Substantially all of the properties of the Missouri Pacific System are covered by liens of either the Missouri Pacific Railroad or The Texas and Pacific Railway first mortgages or under the companies' equipment obligations.

Notes to Consolidated Financial Statements

NOTE 1 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Principles of financial statement preparation and consolidation — The accompanying consolidated financial statements of the Missouri Pacific System include the accounts of the Missouri Pacific Railroad Company and its majority-owned subsidiaries, principally the Texas and Pacific System (96.5% owned) and the Chicago & Eastern Illinois System (66.8% owned).

In order to comply with the provisions of Accounting Principles Board Opinion Number 18, which became effective in 1972, the Company changed from the cost method to the equity method of accounting for investments in less than majority-owned terminal railroad companies (joint ventures) and other affiliated companies where the Company has the ability to exercise significant influence over their operating and financial policies. These investments are now carried at the Company's equity in the underlying net assets of these nonsubsidiary companies.

The Company and its railroad subsidiaries maintain their books of account, and the accompanying statements have been prepared, in conformity with principles and methods of accounting prescribed or authorized by the Interstate Commerce Commission. These principles and methods do not require provisions for deferred federal income taxes (see federal income tax policy) as is required under generally accepted accounting principles.

Federal income taxes — The accompanying financial statements include provisions for current federal income taxes which have been reduced by the tax benefits of deductions for accelerated depreciation and amortization of properties in advance of such deductions for financial statement purposes. These benefits have been partially offset by the effects of financial statement expense accruals for casualties and other matters which are not deducted for income tax purposes until paid. The net current

Report of Independent Accountants

Price Waterhouse & Co.
ONE MEMORIAL DRIVE, ST. LOUIS, MISSOURI 63102

February 16, 1973

To the Stockholders and Board of Directors of
MISSOURI PACIFIC RAILROAD COMPANY

We have examined the consolidated balance sheets of the Missouri Pacific Railroad Company and its subsidiaries as of December 31, 1972 and 1971 and the related statements of consolidated income, retained income, and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Because of the characteristics of the company's two classes of stock, earnings per share data have been omitted from the accompanying consolidated financial statements (see Notes 7 and 9 to the consolidated financial statements).

In our opinion, except that provisions have not been made for deferred federal income taxes as set forth in the supplementary income information and earnings per share data have been omitted, the accompanying consolidated financial statements examined by us present fairly the financial position of the Missouri Pacific Railroad Company and its subsidiaries at December 31, 1972 and 1971, the results of their operations and the changes in financial position for the years then ended, in conformity with generally accepted accounting principles consistently applied after restatement for the change, with which we concur, to the equity method of accounting for investments in certain affiliated companies (see Note 2 to the consolidated financial statements).

Price Waterhouse & Co.

benefit of these timing differences has been normalized by a provision for deferred federal income taxes in the supplementary income information shown below the statement of consolidated income to present income in conformity with generally accepted accounting principles. The cumulative effects of provisions for deferred federal income taxes are included in the condensed consolidated balance sheets presented in conformity with generally accepted accounting principles (see Note 3).

Investment tax credit is accounted for under the flow-through method.

Properties — Properties are stated at estimated original cost, primarily determined as of January 1, 1955 by Interstate Commerce Commission valuations, plus additions and betterments at cost and less retirements since the dates of valuations.

The companies follow the straight-line method of depreciation using various group rates prescribed by the Interstate Commerce Commission. Depreciation provisions during 1972 and 1971 were at rates of approximately 3.6% for equipment and 2.0% for depreciable road properties. However, for rails, ties and other track materials, instead of depreciation accounting, the companies follow an acceptable alternate practice of "replacement" accounting. Under this method, replacements in kind are charged to expense while additions and betterments (improvements) are capitalized. The amounts capitalized are not depreciated and are charged against income only when the related properties are retired. Normal retirements of depreciable property are charged to the appropriate depreciation reserve at cost less salvage. At December 31, 1972 and 1971 consolidated nondepreciable properties, including land and land rights, were approximately $545,000,000.

Excess of net assets (at acquisition) of consolidated subsidiaries over carrying value of investments is not being amortized.

Pensions — The companies have an unfunded, noncontributory pension plan for executives, officials and certain key employees. Related charges to operating expense represent accruals which include normal cost and amortization of prior service cost over a 35-year period beginning January 1, 1966, plus interest on the recorded unfunded pension liability.

Casualty losses — Casualty losses are accrued and charged to income as they are incurred except for major casualties covered by the self-insurance reserve described in Note 6.

Debt and related expense — Discount and expense applicable to long term debt is deferred and amortized over the lives of the respective issues using the bonds outstanding method. Gain on reacquisition of bonds is recorded as income.

NOTE 2 — CHANGE IN ACCOUNTING:

As described in Note 1, the Company changed from the cost method to the equity method of accounting for certain investments in 1972. The accompanying consolidated financial statements for 1971 have been restated for comparative purposes. Accordingly, consolidated retained income as of January 1, 1971 was increased by $4,892,000 on an I.C.C. accounting basis representing the Company's equity in the underlying net assets of these companies at that date; and the 1971 consolidated results were increased by $748,000 on an I.C.C. accounting basis, and by $353,000 on a generally accepted accounting basis, representing the Company's proportionate share of their 1971 net income.

NOTE 3 — FEDERAL INCOME TAXES:

As described in Note 1, the accompanying financial statements do not include provisions for deferred federal income taxes. The condensed consolidated balance sheets shown below have been adjusted for the cumulative effects of such provisions and are presented in conformity with generally accepted accounting principles. Because of the change to equity accounting described in Note 2, other assets and deferred charges, equity of minority stockholders and retained income at December 31, 1971 have been increased by $7,471,000, $811,000 and $5,288,000, respectively, and properties have been decreased by $1,372,000 from amounts previously reported.

	December 31	
Assets	**1972**	**1971**
Current assets	$ 154,146,000	$ 152,001,000
Properties, net	1,278,517,000	1,228,851,000
Other assets and deferred charges	67,938,000	62,507,000
	$1,500,601,000	$1,443,359,000
Liabilities		
Current liabilities (exclusive of long term debt due within one year)	$ 125,176,000	$ 114,485,000
Long term debt — due within one year	28,599,000	26,199,000
Long term debt	713,630,000	690,104,000
Other liabilities and deferred credits	192,312,000	176,581,000
Equity of minority stockholders in consolidated subsidiaries	31,905,000	34,139,000
Capital stock and capital surplus	191,913,000	191,895,000
Retained income	217,066,000	209,956,000
	$1,500,601,000	$1,443,359,000

PROSPECTUS

1,200,000 Shares Common Stock
($10 Par Value)

MISSISSIPPI RIVER FUEL CORPORATION

EXCHANGE OFFER TO HOLDERS OF CLASS A CAPITAL STOCK OF MISSOURI PACIFIC RAILROAD COMPANY

The 1,200,000 shares of Common Stock of Mississippi River Fuel Corporation covered hereby are offered by it to the holders of Class A Capital Stock of Missouri Pacific Railroad Company at the rate of one and one-third (1⅓) shares of Mississippi River Fuel Corporation Common Stock for one (1) share of Missouri Pacific Railroad Company Class A Stock (i.e., four (4) Mississippi for three (3) Missouri Pacific). The Exchange Offer is subject to the approval and ratification of the stockholders of Mississippi River Fuel Corporation and is made on the terms and conditions which are more fully set forth herein under the heading "Exchange Offer to Holders of Class A Stock of Missouri Pacific Railroad Company." Mississippi will have no obligation to effect the exchange if less than 900,000 shares of Missouri Pacific Class A Capital Stock are tendered pursuant to the Offer.

The Exchange Offer will expire at 3:00 o'clock P.M., New York Time, on November 21, 1962 (the "Expiration Date"), unless 900,000 shares of Class A Stock of Missouri Pacific have been duly deposited for exchange prior thereto or unless such Expiration Date is extended as provided herein.

The Exchange Offer may be accepted by the deposit with Mercantile Trust Company, St. Louis, Exchange Agent, or Morgan Guaranty Trust Company of New York, Forwarding Agent for the Exchange Agent, of certificates for shares of Class A Capital Stock of Missouri Pacific Railroad Company, together with a duly completed and executed Exchange Form provided for that purpose.

Eastman Dillon, Union Securities & Co. and Dempsey-Tegeler & Co., Inc. will form and act as Managers of a group of Soliciting Dealers, including themselves, which will solicit exchanges. Mississippi River Fuel Corporation will pay commissions as described herein for exchanges effected through efforts of dealers. On the basis of the closing price of Missouri Pacific Class A Stock on the New York Stock Exchange on October 15, 1962, the commission payable on an exchange of 100 shares of Missouri Pacific Class A Capital Stock would be $82.26. In addition, Mississippi River Fuel Corporation will incur out-of-pocket expenses estimated at $123,000, and will pay Eastman Dillon, Union Securities & Co. and Dempsey-Tegeler & Co., Inc. $30,000 as compensation for their services as Dealer Managers and will reimburse them for their out-of-pocket expenses in that capacity.

Eastman Dillon, Union Securities & Co., Dempsey-Tegeler & Co., Inc. and the Soliciting Dealers and other dealers who receive commissions from Mississippi may be deemed to be Underwriters within the meaning of the Securities Act of 1933. Mississippi has agreed to indemnify the Soliciting Dealers against certain liabilities, including liabilities under the Act.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is October 18, 1962.

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(6) **The Missouri-Illinois Railroad Company,** of which Missouri Pacific owns 54.4% of the outstanding stock.

The Missouri Pacific System, through the Missouri Pacific Railroad Company and The Texas and Pacific Railway Company, in addition to minority interests in various terminal companies, also has the following significant subsidiaries and investments in other companies:

American Refrigerator Transit Company: This is a car rental company owning approximately 8,191 refrigerator cars which are leased to a number of railroad carriers. The Missouri Pacific Railroad Company owns 3,550 shares of the 5,000 shares of outstanding Capital Stock. There is no funded debt except equipment obligations outstanding at December 31, 1961, in the principal amount of $9,810,000.

Galveston, Houston and Henderson Railroad: Missouri Pacific owns 50% of the stock of this company, which operates approximately 107 miles of track extending between Houston and Galveston, Texas.

Houston Belt & Terminal Railway: Missouri Pacific owns 50% of the stock of this company which performs switching services within the limits of Houston, Texas.

Brownsville & Matamoros Bridge Company: Missouri Pacific owns 50% of stock of this company which owns and operates a bridge over the Rio Grande connecting with the National Railways of Mexico.

Southern Illinois and Missouri Bridge Company: This company owns 9.24 miles of track between Thebes, Illinois, and Illmo, Missouri, including a double track steel bridge over the Mississippi River between those points. This bridge and trackage provide a connection with the main line of the Missouri Pacific at Thebes and the St. Louis-Southwestern Railway Company at Illmo. Missouri Pacific owns 300 of the 500 shares of outstanding Capital Stock.

Missouri Pacific Truck Lines, Inc.: This company operates common carrier truck freight service over 11,445 miles of routes in the States of Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Tennessee and Texas. It also performs a substitute service for the Company in handling certain less-than-carload traffic. The Missouri Pacific owns all of the outstanding securities.

The Texas and Pacific Motor Transport Company: This is a wholly-owned subsidiary of The Texas and Pacific Railway, which operates 3,085 miles of truck routes in Texas and Louisiana.

Western Coal and Mining Company: This company owns mineral rights in 61,807 acres of land in the States of Arkansas, Illinois, Kansas, Missouri, and Oklahoma. It conducts no mining operations, but portions of the land are leased to others for mining and other purposes. Missouri Pacific owns all of the outstanding securities.

Missouri Improvement Company: This company owns lands in various states. Its stock is 100% owned by Missouri Pacific.

Eagle Ford Land & Industrial Company: This company owns lands in various counties in Texas. Texas and Pacific Railway Company owns 100% of its stock.

The Merchants Cold Storage Company: This company is 100% owned by The Texas and Pacific Railway Company and owns and operates warehouse facilities in Fort Worth, Texas.

The Missouri Pacific also owns 23,600 shares of Class A Stock and 74,104 shares of Common Stock of the Chicago & Eastern Illinois Railroad Company, which shares represent 19.31% of all the presently outstanding voting stock of said railroad. Directly or indirectly Missouri Pacific also owns $970,000 of C & E I's convertible General Mortgage Bonds. All Chicago and Eastern Illinois shares of stock owned are trusteed with The Marine Midland Trust Company of New York as an independent voting trustee, and Missouri Pacific presently has pending before the Interstate Commerce Commission an application seeking authority to acquire control through stock ownership of said Chicago & Eastern Illinois Railroad. Reference is made to the heading "Control of the Chicago & Eastern Illinois Railroad Company" for a discussion of the status of this proceeding. Reference is also made to the heading "Control of The Kansas, Oklahoma & Gulf Railway Company et al." for a discussion of the contract

Because of the energy demand and because of the monetary inflation of the paper dollar they are very valuable.That is why Mississippi River (Fuel) Corp.has been trying desperately to conver its $5 preferential $100 liquidating value stock into the equity bearing Common stock so as to beat inflation and at the same time take over the Class B equity bearing Common stock's property values of over $615 million at no cost to the Class A in taxes.Mississippi's share of windfall property values taken from the Class B will be over $385 million, besides converting its $5 preferential $100 liquidating stock into the Convertible Preferred Stock,convertible into the new equity bearing common stock. In this way,Mississippi has become enabled to chisel into the earnings of the Class B Equity Stock so that in the future it may pay dividends on its newly acquired Common,which it has gotten from the old Class A conversion,whichmay be equivalent to $10,$15,or $20 per share compared to the $5 paid by the Class A,now worth $430.Shar

Therefore,without an evaluation of the Class B equity bearing Common Stock to find its true value under due process of law according to MoPac's Charter or the I.C.C.'s "Agreed System Plan"of(290 ICC P.665) Reorganization of 1954-1955,the 1972-1973 "Plan of Recapitalization" when coupled with the Section 20a of the Interstate Commerce Act, whereby Commission Division 3 of the I.C.C. grants"Authority"to the Missouri Pacific Railroad Company to issue"new securities," become a secret clever vehicle of fraud that helps defraud the United States Government of over $100 million in Federal Income taxes,besides defrauding the Stockholders of the Class B out of over $615 million in property values consisting of millions of acres of property and mineral rights containing oil,coal,gas,etc.,besides millions of dollars of Retained Income that belong to Class B Common Stockholders. The I.C.C. thinks that just because it has "PLENARY POWER" under Section 20a,it can help defraud both the U.S.Government out of millions

-or over $100 million dollars in Federal Income taxes,besides helping defraud the Class B ordinary Common Stockholders out of over $615 million(to over $797 million or perhaps billions of dollars)inland, railroad,and property values.The I.C.C. Commission Division 3,made up of Commissioners Tuggle,Deason and MacFarland state that in the Commission's report in the"Reorganization Plan " "recognized the possibility of a change in the relationship between the twc classes of stock.MOREOVER,THE COMMISSION'S JURISDICTION UNDER 20a is PLENARY AND EXCLUSIVE AND INDEPENDANT OF ANY OTHER FEDERAL AUTHORITY. Schwabacher v.United States supra ,at 197.Since the matter involved in this proceeding comes within the purview of section 20a,Our Jurisdiction in the proceeding is Supreme. . . ." (See I.C.C. Finance Docket # 27346,Missouri Pacific Railroad Co.,Securities,Decided December 6,1973,Service Date December 14,1973,page 64.See Exhibit

The answer to Division 3 of the Commission's statement that: "Moreover,the Commission's jurisdiction under 20a is plenary and exclusive and independent of any other Federal authority," is as follows-How can you convert A $100 liquidating value $5 dividend paying Preference Stock into an Equity Bearing Stock without Evaluating Class B?

1) MoPac is a solvent prosperous Railroad Company.In 1974 Class B equity bearing Common Stock earned approximately $1,300 per share on an I.C.C. accounting basis.It cannot be treated by Commission Division 3, Commissioners Tuggle,Deason and MacFarland,as if it was in receivership. For that reason,the securities of MoPac must be evaluated under due process of law (both the $5 Cl.A,and the Class B equity bearing Common Stock) to find their true value.So in order to do this,use MoPac's I.C.C. "Agreed System Plan"of Reorganization or Charter of 1951-1955, which is A law of the United States,passed by the ICC and the U.S.Court.

2) MoPac's "Agreed System Plan" regarding the $5 A Preferential $100 Stock's value,states as follows in 290 I.C.C. 477,page 598:

(a) Modification of the Class A stock.-Under the agreed plan the new Class A stock would be noncumulative and nonconvertible and dividends would be limited to...$5 per year...without further participation in

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earnings.

(b)"The groups contend that the provision of the agreed plan eliminating the new preferred stock places control of the new company in the new ClassAstock although the fact that such stock is noncumulative and nonconverticle would result in entire loss of income by the holders in years of low earnings and a resulting low market price for the stock."

"We believe it impossible to reorganize the debtors in a manner equitable to all classes of security holders under a plan which would assure the new stockholders of a return in every year."

(c) "Provision for this stock should be further modified so that upon dissolution,winding up, or liquidation of the new company, it would be entitled to receive out of the assets of the company only $100 per share,such distribution should be prior to any distribution to the ClassB stockholders."

(d) On page 625,290 I.C.C. ,the following is stated by Commissioner MaHaffie in regards to the Class A $5 Preferential stock: "The prior Class"A" stock is limited as to dividends and is non cumulative.It will be of a speculative character for some years at best."

From all of the evidence as above,it can readily be seen that the Class A MoPac stock under the "Agreed Plan" of Reorganization would be noncumulative and nonconvertible and there would result an entire loss of income by Class A holders or no payment of dividends in years of low earnings; and that Class A has a liquidating value of only $100 a share.

Therefore,even though Commission Division 3,Tuggle,Deason and McFarland state that"the Commission's jusisdiction under 20 a is plenary and exclusive and independent of any Federal authority," and that"Since the matter involved in this proceeding comes within the purview of section 20a,our jurisdiction in the proceeding is supreme..," still Class A and B must be evaluated according to "Agreed System Plan,"

75-7241 Brief for James C.Gabriel,Pro Se,Appellant

in order to give the Class A $5 Preferential $100 liquidating value stock its real value in relationship to the Class B equity stock.The I.C.C.cannot say that $2,450 per Class B is "Fair Value" as on page 58, F.D.27346,and that Class B"receiving value for value based upon recognized methods of valuation"(see page 62,same),when the "Agreed System Plan" is MoPac's Charter,which the ICC recognized it as such in 1954.

SEE I.C.C. FINANCE DOCKET #27346 PAGE 64, AUTHORITY GRANTED TO MOPAC

classes of stock. Moreover, the Commission's jurisdiction under 20a is plenary and exclusive and independent of any other Federal authority. Schwabacher v. United States, supra, at 197. Since the matter involved in this proceeding comes within the purview of section 20a, our jurisdiction in the proceeding is supreme

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Modification of the class A stock.—Under the agreed plan, the new issued class A stock would be noncumulative and nonconvertible and dividends would be limited to $4 or $5 per year as we may decide, without further participation in earnings. We herein have concluded in our discussion of the treatment of the old preferred-stock holders that a dividend rate of $5 was necessary to compensate them for their rights. We also concluded that we should approve the elimination.

The groups contend that the provision of the agreed plan eliminating the new preferred stock places control of the new company in the new class A stock although the fact that such stock is noncumulative and nonconvertible would result in entire loss of income by the holders in years of low earnings and a resulting low market price for the stock. Such a type of voting security, they assert, would not promote the selection of the best, or a stable management, and they point out that the holders of the new first-mortgage bonds would be vitally interested in a stable and capable management. Considering the estimates of earnings upon which the examiners based their recommendations, we do not attach material significance to this criticism. We believe it impossible to reorganize the debtors in a manner equitable to all classes of security holders under a plan which would assure the new stockholders of a return in every year. This objection to the agreed plan is not sustained.

In accordance with our hereinbefore-stated findings, we conclude that the 1949 plan provision for class A common stock should be modified so that the annual dividends would be limited to $5 in any year, without further participation in earnings in the same year. Provision for this stock should be further modified so that upon dissolution, winding up, or liquidation of the new company, it would be entitled to receive out of the assets of the company only $100 per share, such distribution to be prior to any distribution to the class B stockholders. The limitation upon the issue of additional stock or the change of the rights of stockholders should be modified to conform to the agreed plan.

Modification of the class B common stock.—Under the plan recommended by the examiners, no class B common stock would have been

14 290 I.C.C.

Regardless of the ICC's jurisdiction under 20a being plenary, exclusive,"independent of any other Federal authority",and "Since the matter involved in this proceeding comes within the purview of section 20a," and that their "jurisdiction in the proceeding is supreme," which I don't totally go along with because MoPac is a solvent company and cannot be treated as bankrupt, the fact remains that both classes of stock must be evaluated under "Agreed System Plan" or MoPac Charter to find the true "Fair Value" and save millions in taxes to Gov't.

3) MoPac's "Agreed System Plan" or Charter regarding the Class B equity bearing Common Stock's value has it stated as follows:

(a) Modification of the Class B common stock. Under the agreed plan there would be 40,657 shares of no-par-value class B stock of $100 stated value, . . . all to be issued to the Missouri Pacific common stockholders on the basis of 1 share for 20 old shares. . .. There would be no other limitation upon the dividends which might be declared and paid on the stock.(290 ICC599.)

(b) In any calender year,no dividends on class B stock shall be declared or paid unless, during that year,dividends of $5 per share shall have been paid or declared and set apart for payment on the class A stock,but there shall be no other restriction on the amount of dividends which may be declared and paid on the Class B stock. (See 290 I.C.C. page 665.)

(c) Class A common stock shall be nonconvertible ,and,in the event of dissolution,winding up,or liquidation of the new company,the holders of this class of stock shall be entitled to receive out of the assets of the new company $100 per share before any distribution is made to the holders of class B common stock,who thereafter shall be entitled to receive any further distributions out of the assets of the new company,without further participation by holders of class A stock.(See 290 I.C.C. page 665, 492)

(d)" Another serious defect is the proposed "B" stock. . . . . .. It is proposed to award it only a small amount in actual par value but to make it the residuary beneficiary of any future prosperity the property may enjoy."(See 290 I.C.C.,pages 624 and 625-Commissioner MaHaffie)

On May 19,1975,Petitioner Gabriel made a motion to Reopen the above case 67 CIV.5095 (EW)in order to protest the payment of fees to Plaintiff Attorneys.At my hearing on the 3rd of June,I also brought out the fact that the U.S. Government was being defrauded over $100 million because Class B was not evaluated at its true higher value according to the MoPac Charter. I was told by the Hon.Court that this was frivolous,had no merit.I was fined $100 by Weinfelds Court.Please read the Transcript of June 3,1975 that I have included as an exhibit.

75-7241 Brief for James C.Gabriel,Pro Se,Appellant

provisions of subsection (e) of section 77 of the Bankruptcy Act, as amended, and of section 208 (b).

We conclude and find that, upon the record previously made in this proceeding and as supplemented by further hearings held pursuant to the provisions of section 208, the 1949 plan of reorganization should be modified in accordance with the findings and conclusions set forth in this report, and that as thus modified the plan will be fair and equitable and in the public interest and compatible with the provisions of section 208, title 11, U. S. Code, and of section 77 of the Bankruptcy Act. The plan so modified is hereby approved and will be certified to the United States District Court for its approval.

All requested findings and proposed modifications of the 1949 plan not specifically discussed in this report, or upon which no finding is made herein, have been duly considered, and they are found not justified to the extent that they are not incorporated in this report and in the modifications of the plan as herein approved.

An appropriate supplemental order will be issued.

MAHAFFIE, *Commissioner*, concurring in the result:

These properties have been in trusteeship for many years. Much work has been done and much expense has been incurred as a result of that fact which would not have had to be done or incurred in private management. A plan which appears to have the approval of most of those interested is now presented. This plan has been worked out and is urged in the hope that it can be made effective promptly. It greatly increases debt over the figures of the prior plan or of that proposed by the examiners. For enduring financial health a very much larger proportion of the value of the property represented by the securities issued than will be the case here must be held by owners with a right to vote, rather than by creditors. This, no matter how little of what ordinarily are considered creditors' rights, the latter possess. Under this plan the debt represented by the debentures is debt in not much more than name. Its creation, however, leaves little of value in the property to be represented by the controlling stock. This is not sound. But it is a direct result of what appears to be the national policy to put a premium on debt as against an equity interest in such properties. And that policy naturally makes for unsound capital structures. In this case the prospective saving to the company at the expense of the United States Treasury is enormous.

Another serious defect is the proposed "B" stock. This is intended to give recognition to the old common. That common has, at most, only a nuisance value if the claims prior to it are to be fully met. It is proposed to award to it only a small amount in actual par value but

290 I. C. C.

to make it the residuary beneficiary of any future prosperity the property may enjoy. The prior class "A" stock is limited as to dividends and is noncumulative. It will be largely of a speculative character for some years at best. But the "B" stock is for the present, and for the foreseeable future, principally valuable as a token for speculation. Consequently, its relation to the "A" stock and to the debentures and income bonds which precede it is reasonably sure to cause trouble.

In view of these facts the problem we must face is whether the public interest in the reorganization of these properties and their return to private operation without prolonged further delay and expense outweighs the obvious defects of this agreed plan. On the whole I think it does. Accordingly, although with grave misgivings, I concur in the result.

COMMISSIONERS FREAS and TUGGLE concur in the result.

COMMISSIONER ARPAIA was necessarily absent but if he had been present he would have voted for the adoption of the report.

COMMISSIONER WINCHELL did not participate in the disposition of this case.

290 I. C. C.

As shown on this page 625, ICC Commissioner Mr.Tuggle, Chairman of the present day Commission Division 3, was one of the ICC Commissioners in 1954 who approved and certified the MoPac ICC "Agreed System Plan" of Reorganization to the Federal District Court in Saint Louis, Eastern Division, Eastern Judicial District of Missouri. Commissioner Tuggle should be the first one to acknowledge the fact that you cannot rope in the Class B equity bearing Commonn dissident minority stockholders into a phoney "Plan of Recapitalization" under 20a without first evaluating their B Stock under the ICC "Agreed System Plan" of Reorganization or Charter.

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On page 492, 290 I.C.C. ,it is further stated as to the value of the Class A $5 Preferential $100 liquidating Stock,and to the value Class B equity bearing Common Stock,the following:

"Dividends on Class A Stock would be noncumulative,and none would be paid in the form of stock or notes or in any form other than cash or its equivalent." (Then how is it that Class A has received free $615,000,000 in values made up of Retained Income and Consolidated Non Depreciable Properties,including land and land rights(mineral rights in oil,gas,coal,etc.) from the values of Class B by the connivance and co-operation of the I.C.C. Division 3,which includes Commissioner Tuggle,who was one of the I.C.C.Commissioners who on July 29,1954 had concurred"in the result" Decided July 29,1954 by the I.C.C. which approved and certified the MoPac I.C.C. "Agreed System Plan"of Reorganization or Charter to the United States District Court in Saint Louis,Eastern District,Eastern Judicial District of Missouri, for its approval,as we see on pages 624 and 625 ,290I.C.C.?

I.C.C. Commissioner Mr.Tuggle is Chairman of Commission Division 3 which included Commissioners Deason and MacFarland.This Commission Division 3 Decided December 6,1973,Service Date December 14,1973, "Authority granted to Missouri Pacific Railroad Company" to issue new securities under Section 20a,Finance Docket #27346,whereby Class B equity bearing Common Stockholders were defrauded out of over $615 million dollars in values which Division 3 handed over to the holders of the Class A $5 Preferential Stock,64% controlled by Mississippi River Corp.,gratus-at no cost to Class A,besides Class A going from a limited preference participation of $100 per share or a total of about $186 million for its about 1,860,000 Shares of Class A,to about $801,000,000 value as an equity bearing Common Stock,whose value today is about $420 per share.The Class B equity bearing Stock has now been

reduced in value(as of December 31,1972) from $894,000,000 for the 39,731 Shares of Class B or $22,500 per share ,to $279,000,000 for the 39,731 Shares of Class B or 635,696 of new Common Stock when the 39,731 Class B is multiplied by a split of 16 to one.Now with this fraudulent "Plan of Recapitalization" under Section 20 a of the Interstate Commerce Act,with the connivance of Commission Division 3, which does not evaluate Class B equity bearing Common Stock to give it its real value according to the MoPac "Agreed System Plan"of Reorganization of 1954 by the ICC and the U.S.Federal District Court, $615 million value is being transferred from the Class B to Class A, in addition to the fact that this "Plan of Recapitalization" under Section 20a with the connivance of Commission Division 3, gives unrestricted participation in equity to the Class A Stockholders,and eliminates the full participation in residual equity to the Class B Common Stock which the Commission in 1954,including Commissioner Mr.Tuggle,granted to the Class B Stock,and leaves its equity participation permanemtly frozen at a small fraction of its 100%.In addition, Class B earnings will be permanently reduced in proportion to Class B loss of over $615 million values to the Class A.In addition, this so called "Settlement Agreement " and the "Plan of Recapitalization" with the connivance of Commission Division 3 to neglect to evaluate B Shares according to MoPac's Charter,which Commissioner Tuggle himself helped to formulate In 1954,not only defrauds the Class B Stockholders both the minority,and the majority of Alleghany,but it also defrauds the United States Government Internal Revenue Service out of over $100 million in taxes.My question is,how can the Federal Courts, including the United States Supreme Court ,let such gross corruption and corrupters get away with such a scheme.It is all the fault of the I.C.C.Whatever wrong had happened,the ICC let it happen.A Government investigation is in order as to why the ICC allowed this corruption.

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 9918

MISSOURI PACIFIC RAILROAD COMPANY REORGANIZATION

Submitted July 6, 1954. Decided July 29, 1954

Upon supplemental record made at reopened hearings held pursuant to the provisions of paragraph (b) of section 208, title 11, U. S. Code, and section 77, of the Bankruptcy Act, as amended, plan of reorganization for the Missouri Pacific Railroad Company, and others, debtors, modified and approved.[1]

Appearances as in prior reports and, in addition, *Arthur Arsham*, *Harold Brown*, *Walter H. Brown, Jr.*, *Carl B. Callaway*, *Allan F. Conwill*, *Joseph A. Doyle*, *Felix A. Fishman*, *Edward L. Friedman, Jr.*, *Emanuel Gruss*, *Edward J. Hickey, Jr.*, *John P. Humes*, *Percival E. Jackson*, *Jerome M. Kirshbaum*, *Ferdinand H. Kolcoord*, *Alan S. Kuller*, *Frederick M. Myers, Jr.*, *Eldon S. Olson*, *William P. Palmer*, *David M. Potts*, *Thomas J. Sheehan, Jr.*, *John Ben Shepperd*, *Alfonso E. Solanas*, *Henry I. Stimson*, *Alfred B. Teton*, *Jay W. Tracey, Jr.*, and *Lyonel E. Zunz*.

SEVENTH SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the report proposed by members of the staff of our Bureau of Finance. Thereafter, the bankruptcy trustee, acting pursuant to authorization and direction of the United States district court of jurisdiction in these proceedings, filed with us a petition accompanied by a stipulation and agreement, executed by a majority of the parties in interest, embracing certain modifications of the proposed-report recommendations, which, if adopted, would be acceptable to the parties signatory to the stipulation and agreement as an agreed system plan. Our conclusions differ somewhat from those contained in the proposed report.

Request for oral argument on exceptions was made by the independent directors of the Missouri Pacific Railroad Company, debtor. Similar requests made by the Alleghany Corporation, owner of approximately 49 percent of Missouri Pacific common stock, and Oscar Gruss & Son, holders of International-Great Northern Railroad Company adjustment-mortgage bonds, were later withdrawn, with the res-

[1] For previous reports see 239 I. C. C. 7; 240 I. C. C. 15; 257 I. C. C. 479 and 745; 275 I. C. C. 59 and 203; and 282 I. C. C. 629.

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date, on 30 days' notice, at their principal amount plus all interest then due and payable thereon.

(*b*) *New equity issues.*—In lieu of the issue of a $100 par-value preferred stock and 1 class (A) of no-par-value common stock (exclusive of possible issue of a class B stock upon exercise of warrants issuable to old common-stock holders) recommended in the proposed report, the stock of the reorganized company would consist of 2 classes of common stock, designated A and B, both of which would be without par value and would have full voting rights. Each share of class A stock would have a stated value of $100, and each share of class B stock would have a stated value of either $100 or $50, to be determined by the Commission.

(*c*) *Class A common stock.*—Dividends on this class of new common stock would be limited to either $5 or $4 per share in a calendar year, as the Commission shall determine, irrespective of what amounts may have been paid on class B common stock. Dividends on class A stock would be noncumulative, and none would be paid in the form of stock or notes or in any form other than cash or its equivalent. Class A stock would be nonconvertible, and in the event of dissolution, winding up, or liquidation of the company, the holders of this class of stock would be entitled to receive out of the assets of the company $100 per share before a distribution is made to holders of class B stock, who thereafter would be entitled to any further distributions out of the assets of the company, without further participation by holders of class A stock. The total stated value of class A common stock, $201,824,761, recommended in the proposed report, would be reduced to $191,755,818 in order to (*a*) eliminate the amount of $3,561,839 which was thereunder allocated to the Missouri Pacific secured serial bonds and $293,639 allocated to the New Orleans publicly held stock and (*b*) take account of the reduction of $6,213,465 in the allotment to International adjustment mortgage bonds as set forth in paragraph (*g*) hereof.

(*d*) *Class B common stock.*—This class of new common stock, having a total stated value of $4,065,717, would be issued only to holders of Missouri Pacific common stock on a basis of 1 share of new, of a stated value of $100 per share, for each 20 shares of old stock, or, in the alternative, in the discretion of the Commission, 1 share of new, of a stated value of $50 per share, for each 10 shares of old stock.

No dividends could be declared on class B common stock in any calendar year unless, during that year, dividends of $5 or $4 (whichever is prescribed by the Commission) have been paid or set apart for payment on the class A common stock; but there would be no other restriction on amount of dividends which may be declared and paid on the class B stock.

No. MC-F-10444[1]

ALLEGHANY CORPORATION–CONTROL AND PURCHASE–JONES MOTOR CO., INC.–AND CONTROL ERIE TRUCKING COMPANY

Decided January 27, 1970

1. In No. MC-F-10444, acquisition by Alleghany Corporation of control of Jones Motor Company, Inc., and its motor carrier subsidiary, Erie Trucking Company, through purchase of capital stock of Jones Motor Company, Inc.; and merger of a wholly owned subsidiary of Alleghany Corporation into Jones Motor Company, Inc.; and subsequently the merger of Jones Motor Company, Inc., into Alleghany Corporation for ownership, management, and operation; and acquisition by Fred M. Kirby and Allan P. Kirby, Jr., individually and as coguardians of the property of Allan P. Kirby, an incompetent, of control of the operating rights and property through the transaction, approved and authorized, subject to conditions.
2. In Finance Docket No. 25686, Jones Motor Company, Inc., authorized to issue not exceeding 100 shares of its common stock, par value $1.
3. In Finance Docket No. 18656, previous orders of Commission vacated.
4. In No. MC-FC-70907, application dismissed.

David G. Macdonald and *M. Lauck Walton* for applicants.
Bernard A. Gould and *Warren I. Cohn* for Bureau of Enforcement.

REPORT OF THE COMMISSION

HARDIN, *Commissioner:*

Alleghany Corporation, a holding company with total assets in excess of $200 million, is at present subject to dual regulation under the Investment Company Act and the Interstate Commerce Act (act). It seeks, by a series of transactions hereinafter discussed, to become a motor common carrier subject to the plenary jurisdiction of the Interstate Commerce Commission under part

[1] This report also embraces Finance Docket No. 25686, Jones Motor Co., Inc., Stock; Finance Docket No. 18656, Louisville & Jeffersonville Bridge and Railroad Company, Merger, Etc.; and No. MC-FC-70907, Alleghany Corporation. Transferee, Jones Motor Company, Inc., Transferor.

newly issued common stock of Jones, and Jones will have no other capital stock outstanding.

One of the primary reasons presented by Alleghany for acquisition of the operating rights of Jones is to lessen its tax burden. Such burden arises from the fact that Allan P. Kirby, as of February 28, 1969, was the beneficial owner of 4,084,813 shares, or 56.21 percent of the outstanding common stock of Alleghany. Alleghany is, therefore, for Federal income tax purposes, considered a personal holding company since one person (less than 5 individuals) owns more than 50 percent of its stock and has "personal holding income," (60 percent or more of adjusted gross income consists of dividends and interest) and is therefore subject to a 70-percent penalty tax on the "undistributed personal holding income." Alleghany does not want to distribute all such income to avoid the tax. With Alleghany the recipient of the operating revenue generated by its Jones Motor Division, it alleges, it would be an operating company rather than a holding company for Federal tax purposes. It could then retain and reinvest net earnings and would not be subject to the 70-percent penalty tax.

during the period of the trust. Prior to consummation of the transaction proposed herein, Alleghany shall submit for approval of the Commission a plan showing how it intends to effectuate such trusteeship. While undoubtedly the divestiture of Penn Central shares by the trustee may have certain tax consequences, i.e., either the sale will result in a profit or a loss, Alleghany may avoid the tax consequence by electing not to consummate the proposed transaction. Further, the record before us indicates that the trustee should experience little difficulty in disposing of 390,130 shares of Penn Central now owned by Alleghany. Contained in the affidavit of Fred M. Kirby, previously referred to, is the folowing statement:

Still further, in accordance with Alleghany's suggestion, and our own independent evaluation of the situation, we shall require as a condition for consummation of the proposal that the trusteeship of Alleghany's MoPac securities, as previously ordered by the Commission, be continued subject to the continuing jurisdiction of the Commission. The Commission in the future may either in response to a petition or on its own motion institute an investigation to determine whether the trust should be continued or whether Alleghany's divestiture of MoPac securities should be required.

Mississippi River Corp.which controls MoPac, had misused its voting control over MoPac's board of directors in furtherance of a plan and conspiracy with said directors to improperly favor Mississippi and other Class A stockholders at the expense of the Class B stockholders;and that such conduct will continue unless enjoined by the Court.The complaints ask the Court to direct MoPac to pay reasonable dividends for past years to all Class B stockholders,plus interest thereon;that MoPac be directed to pay reasonable dividends on the Class B stock in the future;and that plaintiffs be awarded their costs,expenses and reasonable counsel fees incurred in prosecuting this action.""Plaintiffs Betty Levin and Alleghany Corporation sought a determination that this action should proceed as a class action on behalf of all MoPac stockholders, and the Court so ordered on October,1968." "Effect upon other MoPac Class B Shareholders-the final judgment entered in this action(in respect to dividends and conspiracy as above) will be binding upon all members of the class. If you desire to intervene in this action,you must mail notice of your intention to intervene,no laterthan December 2,1968,to each of the following: Messrs.Orans,Elsen & Polstein,Attorneys for Plaintiff Betty Levin;Messrs.Donovan Leisure Newton & Irvine,Attorneys for Plaintiff Alleghany Corporation; Messrs. Pomerantz Levy Haudek & Block,Attorneys for Plaintiff Robert LeVasseur;Messrs.Sullivan & Cromwell,Attorneys for Defendants Missouri Pacific Railroad Company and Messrs.Cravt,Davis and Milbank; Leon Leighton,Esq.,Attorney for Defendant Mississippi River Corp." "Ordered that any member of the class desiring to intervene in this ation must,no later than December 2,1968,give notice of intention to intervene in the manner set forth in the appended Notice,and thereafter must,no later than December 20,1968,either obtain the consent of all parties to said intervention or serve notice for leave

to intervene. Dated:New York,New York,October 9,1968,Frederick van Pelt Bryan,U.S.D.J. "

ORDERED that any member of the class desiring to intervene in this action must, no later than December 2, 1968, give notice of intention to intervene in the manner set forth in the appended Notice, and thereafter must, no later than December 20, 1968, either obtain the consent of all parties to said intervention or serve notice of motion for leave to intervene.

Dated: New York, New York
October 9, 1968

Frederick van Pelt Bryan
U.S.D.J.

NATURE OF THE ACTION

This action was commenced by Batty Levin on December 29, 1967. Alleghany Corporation and Robert LeVasseur subsequently were, upon their motions, permitted to intervene as additional plaintiffs.

The complaints filed by all three plaintiffs charge, in substance, that dividends declared and paid by the MoPac board of directors on the Class B stock have been and are unreasonably and unjustifiably low; that Mississippi has misused its voting control over MoPac's board of directors in furtherance of a plan and conspiracy with said directors to improperly favor Mississippi and other Class A stockholders at the expense of the Class B stockholders; and that such conduct will continue unless enjoined by the Court. The complaints ask the Court to direct MoPac to pay reasonable dividends for past years to all Class B stockholders, plus interest thereon; that

The instant action was instituted by Plaintiff Betty Levin on December 29, 1967, against the Defendants-Appellees for better dividends for Class B Missouri Pacific Railroad Co. (MOPAC) stockholders. Thereafter, Alleghany Corp. and Robert Levasseur intervened. On October 9, 1968, the action was made into a class action by order of Honorable Frederick van Pelt Bryan, U.S.D.J., Federal District Court, Southern District of New York (See Document #48) No intervenors were permitted after December 20, 1968.

"The complaints filed by all three plaintiffs charge, in substance, that dividends declared and paid by the MOPAC on the Class "B" stock have been and are unreasonably low; that Mississippi has misused it's voting control over MOPAC'S board of directors in furtherance of a plan and conspiracy with said directors to improperly favor Mississippi and other Class A stock holders at the expense of the Class B stockholders; and that such conduct will continue unless enjoined by the Court. The complaints ask the Court to direct MOPAC to pay reasonable dividends to past years to all Class "B" stockholders plus interest thereon; that MOPAC be directed to pay reasonable dividends on the Class B stock in the future; ant that Plaintiffs be awarded their costs, expenses and reasonable counsel fees incurred in prosecuting this action."

The jurisdiction of the Court below was based in all of the complaints on diversity of citizenship despite the fact that the Court below says otherwise. All of the complaints constituted claims that MOPAC could pay better dividends on Class B than the

$5.00 per share being paid. (See Document #48 of the record on appeal. See Alleghany's Supplemental Report, page 2, of July 20, 1972 Document #115) The complaints also complained that there was a conspiracy by MOPAC and Mississippi River Corp. to denigrate Class B stock and bring the Class B selling price down far enough so that the Class A could better bargain with Class B into exchanging Class B equity bearing stock for a very low figure. Dividends and Conspiracy was the thrust of all three of the complaints.

The basis of jurisdiction of the Federal District Court was, throughout the entire litigation, solely diversity of citizenery and no other base, despite anything said to the contrary. The record of the pleadings show that no plaintiff representative ever claimed that jurisdiccion was based on Section 10(b) of the Securities Exchange Act of 1934 as claimed by the Court below.

No claim was ever made that the jurisdiction was based on Section 10(b) of the SEC Act of 1934. In paragraph 48 of the Alleghany Amended Complaint, Dated 7/14/72, Filed July 20, 1972 was the first mention of this. "The aforesaid conduct of defendants and their co-conspirators was and is in violation of state and federal statutes (including section 10(b) of the Securities Exchange Act of 1934) and their common law fiduciary duty." (Document #115)

And the Court below, in it's opinion of March 19, 1973 (Document #199), approving the settlement agreement (Document #198) stated as follows: "The third course of action based upon defendants' acts and conduct in connection with the Alleged

conspiracy to "freeze out" the B shareholders and allegedly resulting in violations of Section 10(b) of the Securities Exchange Act, the rule thereunder and defendants" common law fiduciary duties, also presents problems of proof to plaintiffs (Page D-8 Proxy statement) Plaintiffs here charge that during the existence of the alleged conspiracy, Mississippi and the defendant T.C. Davis bought and sold shares of B stock; that the objective of the scheme was to depress the market of the B stock, thereby forcing plaintiff to sell at prices much below their true value. Even considering the current liberalization of Rule 10(b)-5, and that plaintiffs' position may have some support, plaintiffs must carry the burden of proving that defendants' actions were fraudulent or unjustified and that such conduct in some way caused plaintiffs' injury. As to the latter, it is interesting to note that plaintiffs do not seek separate relief on their 10(b)-5 claim; instead they urge that the damages be measured by the amount of reasonable dividends allegedly withheld by the defendants during 1964-1971. By invoking this measure of damages, plaintiffs also face the same problems already discussed as to the extent of recovery under the dividend course of action". (See Page D-8 Opinion, Proxy Statement, May 8, 1973 or 59 FRD 353; 365).

This was an attempt to change the base of jurisdiction four years after the action was declared a class action on October 9, 1968 on dividends and conspiracy.

This is true, and it is submitted that those to be represented should have been notified under F.R.C.P. 23. All along, dividends and conspiracy was the thrust of all three of the

complaints.

Therefore, it is a mystery as to what Honorable Weinfeld's Court below based it's claim that jurisdiction was based on 10(b) of the S.E.C. Act of 1934, which requires no jurisdictional amount.

Appellant James C. Gabriel relies on Zahn et al v. International Paper Co. 42 U.S.L.W. (U.S. Supreme Court decided December 7, 1973). In a spurious class suit such as this, wherein jurisdiction is based on diversity of citizenship, each and every member of the class in a Rule 23(b)(3) class action must satisfy the $10,000.00 jurisdictional amount and any plaintiff who does not must be dismissed from the case. Multiple plaintiff with separate and distinct claims must each satisfy the jurisdictional amount of $10,000 in Federal Courts, and in this diversity class action under Federal Rules of Civil Procedure 23(b)(3) by owners of lakeshore property charging respondent with polluting the lake, where only the named plaintiffs but not the unnamed plaintiffs could show damages in the jurisdictional ($10,000) amount, a class action is not maintainable. Each plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount and any plaintiff who does not must be dismissed from the case (Snyder v. Harris, 394, U.S. 332. Followed Pp 2-11 469 F2D 1033 Affirmed) In that the present suit in the MOPAC case originated as a suit for better dividends, over 70% of the Class B holders had no such $10,000 damages amount in controversy because over 74% of the Class B holders had less than 10 shares of Class B. Therefore many Class B holders must be

dismissed from this case. Therefore there is no class action.

A settlement agreement or plan of recapitalization was entered into by plaintiffs of the class action on dividends and conspiracy by Alleghany Corp. et al. on December 18, 1972. (See Document #198) The class action pleadings on dividends and conspiracy were abandoned and a stipulation of settlement was entered into. A plan of recapitalization was agreed upon under Section 20a of the Interstate Commerce Act of 1940. Each share of Class B was valued at $2450 per share, made up of $850 per share in cash and 16 shares of new common stock. This $2450 per Class B was said by the Court to be "fair" value. (See Document #199 or D-9 of Proxy Statement of Weinfeld's Opinion. There were no provisions made in the settlement agreement for Class B dissenters to have a right of evaluation under due process of law under the MOPAC/I.C.C. "Agreed System Plan" of Reorganization" of 1954 by the I.C.C. and the U.S. Federal District Court, Eastern Division, Eastern Judicial District of Missouri in Saint Louis. By this plan of recapitalization according to the settlement agreement, the equity of the Class B stockholders in MOPAC was reduced from 65½% to 25½% and the equity of the Class A was increased from 34½% to 74½% This is only on the basis of the $349,192,000 retained income that belongs to Class B in relation to the $186,000,000 equity that the Class A has as it's value at $100 per Class A. But when you include the consolidated non-depreciable properties of Class B including land and land (mineral) rights, which

contain oil, gas, coal lands, etc., which as of December 31, 1972 were $545,000,000, making a total of $894,000,000 for Class B, the reduction of Class B values and earnings are enormous. The $894,000,000 value for Class B gives $22,500 per Class B share for it's 39,731 Class B. By adding the $894,000,000 for Class B plus $186,000,000 value for Class A, is equal to $1,080,000,000 value for A and B. The B's value is 82.5% of the total, as of December 31, 1972.

By the settlement agreement and the judgment below, B's value in MOPAC was reduced from 82.5% to 25.5%, or from $894,000,000 to about $275,000,000 when the new common of Class B participates in the new capitalization. Roughly over $615,000,000 in values passes from the Class B equity bearing common stock to the Class A $5.00 preferential stock, at no cost in taxes or otherwise to Class A, increasing Class A values from $186,000,000 to $801,000,000 (186 million + 615 million) or from a value of $100 per Class A to a value of about $100 per Class A to a value of about $430 per share, and reduces Class B value per share from $22,500 to $2,450 per share or there-abouts.

In addition, the Class A stockholders are handed an unrestricted large percent participation in equity which Class A preferential never had such equity participation before, and it eliminates Class B's full participation in the residual equity which the Commission granted to the Class B equity bearing common stock in the MOPAC/I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, and reduces Class B equity partici-

pation very substantially from it's former 100%, and at the same time reduces Class B's earnings per share substantially because $615 million is transferred to Class A in this plan. In 1974 Class B earned around $1,300 per share on an I.C.C. accounting basis.

By this settlement agreement, all of Class B's equity value in MOPAC is reduced from 82.5% to 25.5%, and the difference of 57% points or $615 million in values were handed over to the A $5.00 preferential $100 value stockholders, who pay no taxes for this windfall taken from Class B. Class A is not entitled to this $615 million under the MOPAC Charter or "Agreed System Plan" of Reorganization. That "Agreed System Plan of Reorganization is a law of the United States and it must be enforced by the Courts and the Interstate Commerce Commission.

The settlement agreement was approved by Honorable Edward Weinfeld in his opinion of March 19, 1973. (See Document #199) It became the "Plan of Recapitalization of MOPAC, which when coupled with Section 20a of the Interstate Commerce Act of 1940, becomes the clever vehicle which helps defraud the United States Government out of taxes on over $400,000,000 in values. Alleghany's Class B stock was undervalued by not evaluating Class B under the I.C.C.'s MOPAC Charter of 1954-1955, and by doing this in this clever scheme or fradulent way, Class A has a profit of over $615 million that it steals andreceives from Class B by a clever conspiracy against the minority and dissident Class B who are roped into such a clever plan or scheme wherein the Federal Court below refuses to allow anyone of the Class B stockholders to "opt out" of this class action which the Court below says it is now **not a class action on dividends and conspiracy but** it is now a class action in a plan of recapitalization, and that each Class B stockholder must accept $2,450 maximum value per share, whereas according to I.C.C./ MOPAC "Agreed System Plan" of Reorganization, Class B now has a value of about $22,500 per share. See Document #200 William R. Wesson's motion to amend opinion and judgment of Hon. Edward Weinfeld's Court. Filed April 5, 1973, that opinion of March 19, 1973 not to be binding and judgment of May 2, 1973 also not to be binding upon Wesson and others similarly situated.

Wesson wants to opt out of the class action on the plan of recapitalization, but Weinfeld's Court denies Wesson's motion to opt out on

April 13, 1973. All parties acknowledge that objector"Wesson has a right to appeal from the order or judgment entered thereon." E.W. Apparently the court figured that if William R. Wesson was allowed to "opt out" then everyone would "opt out". Hon. E. Weinfeld decided that all B stockholders would have to accept his decision = $2,450 per Class B.

At the time of the settlement agreement of December 18, 1972, when Alleghany Corp. agreed to sell it's Class B stock to Mississippi River Fuel Corp. for a value of $2,450 per share, Alleghany had been under pressure by the I.C.C. to divest itself of it's MOPAC Class B securities to Mississippi River Corp. in order to remain as a motor carrier under I.C.C. jurisdiction after Alleghany had bought the capital stock of the Jones Motor Co. for about $28 million, (See Alleghany Corp - Control and Purchase - Jones Motor Co. See Document #233, #MC-F-10444) and merged "a wholly owned subsidiary of Alleghany Corp. into Jones Motor Co., Inc., and subsequently the merger of Jones Motor Co., Inc., into Alleghany Corp. for ownership, management, and operation; ...." See page 333 Alleghany Corp - Control & Purchase Jones Motor Co.

"One of the primary reasons presented by Alleghany for acquisition of the operating rights of Jones is to lessen it's tax burden. Such a burden arises from the fact that Allan B. Kirby, as of February 28, 1969, was the beneficial owner of 4,084,813 shares, or 56.21% of the outstanding common stock of Alleghany Corp. Alleghany is, therefore, for Federal Income Tax purposes, considered a personal holding company since one person (less than 5 individuals) owns more than 50% of it's stock and has "personal holding income," (60% or more of adjusted gross income consists of dividends and interest) and is therefore subject to a 70% annual penalty tax on the undistributed personal holding income." Alleghany does not want to distribute all such income to avoid the tax. With Alleghany the recipient of this operating revenue generated by it's Jones Motor Division, it alleges it would be an operating company rather than a holding company for Federal tax purposes." For that reason, Alleghany has become a motor carrier under the I.C.C. jurisdiction in order to save itself from the annual 70% penalty I.R.S. tax, and Alleghany wanted to remain as a motor carrier under the I.C.C. jurisdic-

tion. (See page 339, #MC-F-10444, Document #233)

On page 350 of MC-F-10444, we read the following:

"Still further, in accordance with Alleghany's suggestion, and our own independent evaluation of the situation, we shall require as a condition for consummation of this proposal that the trusteeship of Alleghany's MOPAC securities, as previously ordered by the Commission, be continued subject to the continuing jurisdiction of the Commission. The Commission in the future may either in response to a petition or on it's own motion institute an investigation to determine whether the trust should be continued or whether Alleghany's divestiture of MOPAC securities be required." (See Document #233)

We thus see that Alleghany was under I.C.C. pressure to get rid of it's Class B equity bearing common stock for reasons known only to the Interstate Commerce Commission.

In the brief of Alleghany Corp., intervenor in support of the application of the Missouri Pacific Railroad Company under Section 20a of the Interstate Commerc Act for an order authorizing issuance of securities beforethe I.C.C., Finance Docket #27346, filed October 6, 1973 with the I.C.C., for the plan of recapitalization, to give Class B a value of $2,450 per share, M. Lauch Walton, Esq. states as follows on page 2 of his brief (See Document #233):

"Alleghany's support of the Plan of Reorganization (of 1954) is entitled to great weight by the Commission in considering this application," or present Plan of Recapitalization of 1972-1973.

The Plan of Reorganization of 1954-1955 came about when the MOPAC trusteeGuy A. Thompson, at the direction of the Bankruptcy Court, by a process of mediation and conciliation devised the so called "Agreed System Plan" of 1954. The Interstate CommerceCommission approved the plan which gave recognition, in the capital structure of the reorganized railroad to the interests of theold common stockholders in the form of Class B stock. Missouri Pacific Railroad Reorganization, 290 I.C.C. 477 (1954); approved, in Re Missouri Pacific R.R., 129F. Supp. 392 (E.D. Mo. 1955), Aff'd sub mom Missouri Pacific R.R. 5-½% S. S. BC. v Thompson, 225F.2d 761(8th Cir 1955)".

Alleghany's attorney, M. Lauch Walton Esq. talks about the Class B common that Alleghany had fought for for many years, because there were 3 plans that Alleghany fought against because they would not give any consideration to the old MOPAC common stockholders. But the "Agreed System Plan" of Reorganization of 1954 was approved by the I.C.C., gave recognition to the old common stockholders in the form of Class B stock. Alleghany Corp. spent millions of dollars to help rehabilitate the old MOPAC common which became the Class B equity bearing common stock of the "Agreed System Plan" of 1954 MOPAC Reorganization. Now that Alleghany spent millions of dollars for this "Agreed System Plan" let them enforce it, as it should be.

That is what Appellant Pro Se, Mr. James C. Gabriel is trying to do - have the I.C.C. evaluate MOPAC Class B and Class A according to the "Agreed System Plan" of Reorganization of 1954, by enforcing the "Agreed System Plan", theCharter of the Missouri Pacific Railroad Company wherein Class A gets $5.00 per year, when and if earned and declared and $100 liquidating value. The Class B equity bearing common stock is the residuary beneficiary of all values above all debt, and $100 per Class A liquidating value. This gives Class B Common $349,192,000 Retained Income, plus $545 Million in consolidated non-depreciable properties, including land and land (mineral) rights, which as of today - as of December 31, 1972 have several times the $545 million value. Class B has $894 million value or $22,500 per Class B for it's 39,731 Class B shares. That is the reason why Mississippi is fighting against having Class B evaluated under due process of law by using MOPAC's Charter.

Thus $22,500 value per Class B as of December 31, 1972 is equivalent to 225 shares of new common stock at $100 value per share. The value of the Class A on the other hand is $100 per share liquidating value. The ratio would therefore be 225 shares of new shares for each Class B to 1 share of new stock for each Class A or 225 to 1. That is the reason why the Plaintiff lawyers for Betty Levin, Alleghany Corp. or Robert LeVasseur never mention the fact that there is an "Agreed System Plan" of Reorganization of 1954-1955 that was brought about by the I.C.C. and the United States Federal District Court of Saint Louis, called the Charter, against which Class A Preferential $5.00 stock $100 value, and Class B equity

bearing common stock get their value. Only M. Lauck Walton, Esquire, brought out this fact - that Alleghany fought hard for MOPAC's Charter or "Agreed System Plan of Reorganization of 1954. If Alleghany says that it spent a fortune to bring about this "Agreed System Plan" of Reorganization, then by the same token Alleghany should enforce this "Agreed System Plan" of Reorganization of 1954. (See Document #233, Brief of Alleghany Corp. Intervenor, Filing date October 6, 1973, pages 1, 2 and 3)

Instead, Alleghany Corp. is fighting the present plaintiff who is a protestant against the "Plan of Recapitalization" and stands for the MOPAC "Agreed System Plan" of Reorganization of 1954; and that our Class B equity bearing common stock be evaluated according to MOPAC's Charter or "Agreed Plan". (See also Document #236, page 1)

What right has the I.C.C. got, to convert a $5.00 Preferential $100 value stock into an equity bearing common stock, and take away from the Class B over $615 million in values and give them to Class A at no cost, convert the Class A into a convertible cumulative preferred stock and then convert this stock into the common equity bearing shares, at great financial harm to Class B stockholders, a policy by the I.C.C. and the Federal Courts which has by now aroused the thinking financially minded investors in railroad securities. And this thing has not even started as yet, to go the rounds of the financially interested people. What a fraud and corruption this "Plan of Recapitalization" to be.

Besides making Class A an equity bearing stock and enriching Class A over $615 million out of Class B's values and Mississippi getting over $395,000,000, this clever scheme has become a vehicle which with the aid of the Federal Courts and with the cooperation of the Interstate Commerce Commission Division 3, helped defraud not only the Class B minority and majority stockholders, but it helps defraud the U. S. Government out of over $100 million in taxes because Class B has not been evaluated by due process of law to find it's true high value, but it told that $2,450 per share was a "fair value". Alleghany's interest to sell at $2,450 per share was for selfish interest, so as to stay as a motor carrier to save millions of dollars in taxes annually. (See Document #233 - Alleghany and Jones Motor)

Of the 2 minority Class B holders, of about 300 shares of Class B each, Betty Levin had sold her Class B before the Plan of Recapitalization was consumated, this is evident in that her name did not appear on the Class B MOPAC stock list, and Robert LeVasseur had a conflict of interest, owning several thousand shares of Class A, as far as I know, and this Class A is a conflict of interest if this stockholder does not fight too hard to protect his Class B equity bearing stock, but instead tends to go along with giving up his Class B in a Plan of Recapitalization. Further, I believe Robert LeVasseur, owner of 336 shares of Class B, did not turn in his Class B stock (Stockholders record #459) as of May 1, 1973 for this above "Plan of Recapitalization" of MOPAC under Section 20a of the Interstate Commerce Act of 1940. (See Document #245, List of MOPAC Class B stockholders)

In the proxy statement date May 8, 1973, sent to all MOPAC stockholders, there appeared on page 12, under Federal Income Tax Consequences, that for holders of Class A, the following statement: "No gain or loss will be recognized to a holder of Class A stockupon the exchange of his Class A stock for preferred stock." "Under existing law, no gain or loss will be recognized to any holder of preferred stock upon the conversion of his preferred stock into common stock, except to the extent that cash is received in lieu of fractional shares." Yet Class A $5.00 Preferential gained $615 million in values consisting of retained income of $349 million (See MOPAC 1972 Annual Report, Document #233, Exhibit from MOPAC 1972 Annual Report) and property values of lands and mineral rights including over 61,000 acres of coal land (See Document #233, Exhibit, Mississippi Prospectus, page 32). In addition Class A now becomes an equity bearing stock. The I.C.C. Division 3 has done all of this very cleverly, by confusing the public as to what it's powers are or are not. First and foremost, Division 3 of the Commission has failed to evaluate Class B according to it's own I.C.C. Plan - "Agreed System Plan" of Reorganization of 1954-1955, which in itself is a violation of the law of the United States, because the "Agreed System Plan" of Reorganization is a law of the United States and it must be enforced by Division 3 of the Commission, which it has not done. The Commission Division 3 is taking advantage of the public's ignorance in using it's so called "jurisdiction under 20a as plenary and exclusive and independent of any other Federal Authority.

(Schwabacher v United States, Supra, at 197) Since the matter involved in this proceeding comes within the purview of Section 20a, our jurisdiction is supreme ....." That does not excuse the I.C.C., Division 3 for not having evaluated Class B under due process of law before it does much harm to the public interest, who invest. I.C.C. Division 3 says $2,450 value per Class B is fair value. Yes fair to Class A, but not to Class B. With this hokus pocus, the I.C.C., Division 3 takes it upon itself not to evaluate Class B according to MOPAC's Charter, so that instead of giving Class B a value of $22,500 or more per share, Commission Division 3 says $2,450 per Class B is "Fair Value". (See page 58 of F.D. #27346 of Dec. 6, 1973) Hon. Edward Weinfeld approved the settlement agreement by his opinion of March 19, 1973 (Item 199 record; 59 FRD 353).

The Court said $2,450 per share is a value which the Court said was based not on an actual true value, "but that it was a balancing of likelihoods rather than an actual determination of the facts and law in passing upon whether the proposed settlement is fair, reasonable and adequate to Class B stockholders and MOPAC". (See Page D-11 of Proxy Statement, 59 FRD 353, P 361)

This Plan of Recapitalization gross swindle by the Class A stockholders of over $615 million in values that belong to Class B is done under the aura of the U.S. District Court's decision as "Fair Values" and under the aura of the I.C.C., Division 3 as "Fair Values". The $2,450 value for Class B surely fall short of it's true value of over $22,500 per share. The dissident Class B stockholders are still fighting the Interstate Commerce Commission's Authority of Dec. 6, 1973 granted to MOPAC to issue new securities etc., without first giving Class B it's true and real value according to MOPAC's charter. The I.C.C. made MOPAC's charter. Now let MOPAC abide by that charter.

The merits of the case (Finance Docket #27346) is still being fought in New Jersey Federal District Court by 3 minority Class B stockholders in Civil Actions #74-469, 74-470 and 74-471 - William R. Wesson, John Charles Vaiani and James C. Gabriel.

Payment of fees to the attorneys for the Plaintiff Appellees of $850,000 and $1,772,000 was made by Mississippi River Corp. and MOPAC even though final judgment is still subject to appeal (Section 7:10 of the Settlement Agreement).

75-7241 Brief for James C. Gabriel Pro Se, Appellant

The judgement of July 3rd 1974 awarding fees to plaintiffs' attorneys in the amount of $1,750,000. plus $22,422.00 in expenses and $850,000. was in error in that these awards were premature because appeals were pending in the settlement agreement plus the judgement of May 2nd 1973 contemplated no such payment until the possibility of appeal was over and because it awarded compensation to the Firm of Orans, Elsen and Polstein for legal work allegedly having been performed in an entirely different case to the one below.

" After final judgement is no longer subject to appeal plaintiffs' counsel will apply to the court for allowances of fees and expenses according to the settlement agreement. Section 7=10 Approved by the Court."

Appellant James C. Gabriel is resisting the judgement of July 3rd,1974 There are three appeals pending in the District Court of New Jersey against the ICC approval of the settlement agreement, all of which involves the validity of the July 3rd, 1975 judgement, Civil action #74-469 William R. Wesson; #74-470 John Charles Vaiani; #74-471 James C. Gabriel, not to mention the present appeal in this Honorable Court of Appeals , U.S.C.A. Case #75-724, by James C. Gabriel.

The Judgement of July 3, 1974 could not be final because it was conditioned on the very underlying assumption that the settlement agreement And the Plan of Recapitalization under section 20a was legal and correct and that no change would be made.

The firms of Orans, Elsen & Polstein claimed to have rendered legal service in a prior case of Levin vs Messissippi River Fuel Corp. - 296 U.S. 162, 170 (1967). They have sought payment for these services on the instant case. (See Document #216 of this Record.)

Even though this was a different case the Federal District Court below awarded them compensation. Even the parties in the cases were not shown to be the same.

Neither the Settlement Agreement of December 18, 1972, the Opinion of March 19, 1973, the Judgement of May 2, 1973, nor the June 15, 1973 proxy statement mailed to the Missouri Pacific Railroad stockholders ever stated the fact that there was an understanding that the plantiff's attorney were to be compensated in a prior case which was concluded before this case began, and the plaintiff attorneys should not get paid both to the majority and minority equity bearing Class B Stockholders who are being giving a value of only $2,450. per share, whereas Class B should be evaluated under due process of law according to the Mo Pac Charter of "Agreed System Plan" of Reorganization of 1954-1955 a law of the United States which must be enforced. Under Mo Pac's Charter Class B has a value of about $22,500. per share.

Neither the Settlement Agreement, Weinfells Opinion or the Proxy statement had stated of such a payment. The Court therefore lacked jurisdiction to compensate the attornys for services performed in another suit.

Besides the attorneys of the Plantiffs Appellees did a disservice to the Class B in that they received only $2,450. value for Class B whereas Class B has a value of $22,500. per share. In addition Class B lost it's being the risiduary beneficiary of all values status in the Mo Pac which gave Class A a large stake in the equity values of the Railroad whereas Class A never had this standing before the "Plan of Recapitalization" came into being. Class A always had a value of $100.00 per share and no more. (See Document No. 236)

Furthermore, Class A is not giving any equity to Class B. It is Class B that is giving equity value to Class A., Class B is losing over $615 million values to Class A so that Class A's values have increased from $186 million to $801 million and Class B's value have decreased from $894 million to $279 million as of December 31, 1972. In addition, Class B earnings have been reduced to a small fraction of what they were before the Plan of Recapitalization. For the above reasons the plantiffs attorneys should not receive pay for this service to the Stockholders of Mo Pac Class B. They have sold the Class B down the river.

67 Civ. 5095 (EW)

Satisfaction of Judgement, Judgement # 74,567 - entered in the above entitled action on July 2, 1974 in favor of Alleghany Corp. and against Mississippi River Corporation and Missouri Pacific Railroad Company, jointly and not severally, in the amount of $850,000. which judgement was docketed on July 3, 1974 in the office of the Clerk of the Southern District of New York, and said Judgement has been paid.

Entire satisfaction of said judgement is hereby acknowledged, and the said Clerk is hereby authorized and directed to make an entry of entire satisfaction on the docket of said Judgement dated April 21, 1975, by Donovan Leisure Newton & Irvine 67 CIV. 5095 (EW)

See Document #240

Judgement numbered 74,567 entered in the above entitled action on July 2, 1974 in favor of Orans, Elsen & Polstein, a partnership, and Pomerantz, Levy & Haudek and Block, a partnership, jointly and not severally, and against Mississippi River Corporation and Missouri Pacific Railroad Co., jointly and not severally, in the sum of $1,750,000. plus dispursements of $22,422.06 for a total of $1,772,426.06 which judgement was docketed on July 3, 1974 in the office of the Clerk of the Southern District of New York, and said judgement has been paid.

POINT I

The Judgment of the Court below approving this Settlement of the Plaintiffs' Class Action must be reversed because:

Plaintiffs-Appellees Levin,Alleghany and LeVasseur claiming to represen Class B Stockholders,abandoned their cause of action in regards to dividends and conspiracy and negotiated to sell all of the Class B Stock in a Recapitalization Plan,selling the minority Class B Stockholders down the river in the process.

The law protecting property rights and litigation within the scope of the pleadings doesnot sanction this.There was no compromise within the frame of the pleadings.

Grave injustice was done to the petitioner by Alleghany Corp. in taking away petitioner's property in his Class B equity bearing Common Stock without any right to a due process law evaluation according to the MoPac I.C.C. "Agreed System Plan" of Reorganization or Charter,which is a law of the United States and it must be enforced.

Petitioner presents an exact copy of Alleghany's Brief dated October 6,1973 as submitted to the I.C.C. in support of Alleghany's Application #27,346.Alleghany tries to justify their conduct in great and"most notorious pieces of predatory finance."(See Exhibit Document #233.

Alleghany by this Settlement Agreement , was selling its Class B stock to Mississippi River Corp. I did not become a party to the lowly deal.The minority Class B holders should get an evaluation under law.

Alleghany was directed by the ICC to divest itself of its MoPac Stocks if it wished to remain as a motor carries under the ICC jurisdiction so as to save itself of a 70% annual I.R.S.penalty tax.

Alleghany recognizes the Class B Stock as the outcome of the "Agreed System Plan" of Reorganization of 1954 that was approved by th

ICC and certified to the Federal District Court in Saint Louis. Petitioner recognizes that the enforcement of the "Agreed System Plan" of Reorganization is the only solution to this MoPac Problem.

Petitioner requests that this Honorable Court in reading Alleghany's self serving statements justifying their conduct, bear in mind:

(1) Alleghany was under ICC direction to divest itself of its MoPac Class B securities in order to remain as a motor carrier under the ICC jurisdiction and save annually 70% I.R.S. penalty taxes .

(2) Alleghany was selling its Class B by its Settlement Agreement in bulk to the Mississippi while your petitioner wants to have his Class B evaluated under due process of law according to MoPac's Charter.

(3) Class B is losing to Class A about $615 in values, made up of Retained Income coal and oil lands mineral rights. Class A now goes from $186 million value to $801 million value, or from a value of about $100 per share to more than $400 per share, in addition to gaining equity status, that rightfully belongs to Class B as the ICC had directed, 1954.

(4) The Class B is more valuable than the Class A, but according to the District's Judgment below, the reverse has been accomplished, and all because Class B was not evaluated according to due process of law .

(5) The Court below in its opinion relied upon representations made by Alleghany that the Settlement Agreement was fair to the Class B Stockholders. Alleghany had a selfish interest to sell its Class B, and in doing so, it was selling the minority Class B holders down the river.

(6) A grave injustice has been done to Petitioner by his opponents, and Rule 23FRCP has been misused to corral the minority Class B and fleece them of their property values. The true value of Class B as of December 31, 1972 was about $22,500 per share but are being given only $2,400 per share value, and the remainder or about $20,000 per Class B was taken by the Class A preferential stocks as windfall profits, without paying any I.R.S. taxes for this $615 million.

Point II

The Judgment of the Court below must either be reversed or the Class B equity bearing stock must be evaluated under the "Agreed System Plan" of Reorganization of 1954-1955.

(a) The Court below had no jurisdiction to determine Class B rights except in so far as the pleadings were concerned, and these were on dividends and conspiracy, not on "Recapitalixation."

(b) The Settlement Agreement was not fair to the Class B but was more than fair to Class A. Class B has an equity value of over $22,500 pe share and Class A only $100 per share. The ratio is 225 shares to Class B to one share to Class A. This $2,450 value to Class B is not fair, for thi equity bearing common stock that earned about $1,300 per share in 1974 on an ICC accounting basis.

The United States Government Internal Revenue Service is the great loser in this deal because Class A is getting over $615 million in values from Class B in this deal without paying any taxes on this windfall profit. The Government is losing taxes of around $100 million.

The only way to correct this is to have an evaluation of Class B according to the MoPac Charter. It is unlawful to pay off Class B with Class B's own money, and then give all the gains that were gotten from Class B to the Class A Preferential $5 dividend paying stock, with $100 per Class A value, to now make Class A value increase to about $450 in value, and at the same time have Class A become an equity bearing stock. This is no civil action case, this is stealing, this is a criminal case and it should be treated as such by the Federal Courts. Why should Class B Stockholders plead with the Federal Courts for the return of their stock of its former value in a civil action?

The Mopac ICC "Agreed System of Reorganization" of 1954-1955, coupled with the fact that the Settlement Agreement leads to the "Plan of Recapitalization and the Section 20a of the Interstate Commerce Act where Commission Division 3 says that "the Commission's jurisdiction under 20a is plenary and exclusive and independant of any other Federal authority," and Since the matter involved in this proceeding comes

within the purview of Section 20a,our jurisdiction in the proceeding is supreme."

In this transaction the United States Government is being cheated out of millions in Federal Taxes.

MoPac's Class B property values now have increased many fold in the last few years.That is what Mississippi bargained for.

The Court below had no business going outside the issues of dividends and conspiracy.It went into a Plan of Recapitalization.By going outside the issues the Court below became engaged in an administrative business role.No matter how well intentioned its motivation to help,it was not he Court's business to be so engaged.

The MoPac ICC "Agreed System Plan"of Reorganization proves that Class A is a $5 dividend $100 value stock,it is noncumulative and nonconvertible,entitled to receive out of the assets of the company only $100 per share before a distribution is made to the holders of Class B stock who thereafter would be entitled to receive out of the assets of the company the remaining assets,without further participation of the Class A.Class B is likened to an equity bearer of MoPac.

Alleghany's desire to remain under the ICC as a motor carrier, to save millions in taxes annually has cost the B Stockholders $615Million MoPac Class A and Class B must be evaluated to give the remaining ClassBB stockholders their stock's real value under due process of law. We cannot flout the U.S. Constitution forever.

Point III

The Judgement in the Court below is in error and must be reversed, because the jurisdiction of the Class Action was based upon diversity of citizenship alone. It was started on pleadings of dividends and conspiracy as ordered by Honorable F.vPelt Bryan in 1968,October 9th,with no intervenors permitted after December 20,1968,which later was convoluted into a Plan of Recapitalization

In 1973 when the Plan of Recapitalization was presented to the Class B Stockholders over 70% of the Class B could not meet the individual jurisdictional amount of $10,000loss,so that the Court lacked jurisdiction to bind such stockholders in a class action(according to the Zan v.Int'l.paper

Class B Stockholders did not have the amount of $10,000 involved in the litigation below for better dividends.

A review of the Complaints and the Supplemental complaints show that the jurisdiction of the Plaintiffs was based solely on diversity of citizenship.

For example,even the Amended Supplemental Complaint of Intervenor Alleghany Corporation that they filed on July 20,1972,almost 4 years after the action on MoPac was declared a Class Action.This was 5 months before the Settlement Agreement,and it still alleged that jurisdiction was based on diversity of citizenship (See Document #115 of the Record).

No claim was ever made by the Plaintiffs that jurisdictionwas based on diversity on Section 10(b) of the Securities Exchange Act of 1934. It was only mentioned for the first time in paragraph 48 of Alleghany's Amended Complaint.Weinfeld's Court,in its Opinion of March 19,1973 approving the Settlement Agreement ,stated that: "it is interesting to note that Plaintiffs do not see a separate relief 10b-5 claim; instead they urge that the damage be measured by the amount of reasonable dividends allegedly withheldby the defendants during 1964-1971.

(59 FRD 353,365).

Therefore four years after the action was declared a Class Action in respect to dividends and conspiracy,the base of the jurisdiction was changed into Recapitalization.In the meantime,those Class B Stockholders to be represented should have been notified under F.R.C.P. 23.

The Court below said that it based its claim that jurisdiction was based 10b of the S,E.C. of 1934,which according to themrequired no jurisdictional amount.

Appellant James C.Gabriel relies on Zahn v.Int'l.Paper Co. 42 U.S. L.W.4087 (decided by United States Supreme Court on December 17,1973)which affirms the opinion of this Court that in a spurious Class suit such as this one,jurisdiction is based on diversity of citizenship.That each and every member of the Class must have at stake in the suit the $10,000 amount in damages.Being that this is a suit for better dividends,the majority of the dissident Class B holders had no such amount in controversy.Even if some did,it is necessary that all must have this amount in controversy,otherwise it does not hold as a Class Action.

Point IV

The Judgment of the Court below must be reversed because not only does the Judgment help defraud the MoPac Class B stockholders out of most of their property values,but in addition this "Plan of Recapitalization"under section 20a corralls the minority Class B Stockholders into a boxed canyon in order to fleece the small Class B Stockholders.

It also helps defraud the United States Government Internal Revenue Service out of taxes on over$615 million that the Class A received as windfall profits from the Class B on which Class A pays no taxes.

Must the United States Government also suffer by such irresponsibility on the part of government agencies whose first duty it is to see that the laws which help bring equal justice to all, are enforced?

Alleghany's misleading statements did not benefit the U.S. Government. It helped defraud the Government by not evaluating Class B according to the MoPac Charter and thus giving this Class B its proper valuation. It is the duty of the I.C.C. to evaluate Class B MoPac Common Stock according to the "Agreed System Plan"of Reorganization in order to find Class B's real values,so that both the U.S.Government and the small people who own a few shares of MoPac Class B benefit.

75-7241 James C.Gabriel,Pro Se,Appellant

Appellant prays that this Honorable Court make a ruling to have his MoPac Class B equity bearing Common Stock evaluated according to the MoPac I.C.C. "Agreed System Plan"of Reorganization of 1954-1955. At the very least the judgment must be modified so that appellant may have a right to seek appraisal by the I,C.C.

Appellant did not ask for this "Plan of Recapitalization" at no time.It is still a mystery to me how anyone can get away with this sort of thing.Class B at all times should be evaluated according to its Charter-the Mopac Agreed System Plan of Reorganization.

Respectfully submitted,

Dated: Mommouth County,New Jersey
June 30 th,1975

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Marie Soares

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Certificate of Service

I hereby certify that I have this day served the foregoing Briefs and Appendixes to all the above parties of Record by mailing each above party a Brief and Appendix by first Class mail, properly addressed to each party.

James C. Gabriel Pro Se

James C. Gabriel, Pro Se

Dated: Monmouth County, New Jersey
June 30th, 1975

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